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FM AMEMBASSY SUVA
TO RUEHC/SECSTATE WASHDC 0131
INFO RUEHBY/AMEMBASSY CANBERRA 1721
RUEHPB/AMEMBASSY PORT MORESBY 1293
RUEHWL/AMEMBASSY WELLINGTON 1488
RUEHNZ/AMCONSUL AUCKLAND 0464
RUEHDN/AMCONSUL SYDNEY 0871
RHHMUNA/HQ USPACOM HONOLULU HI
RHHJJAA/JICPAC HONOLULU HI

C O N F I D E N T I A L SECTION 01 OF 02 SUVA 000333

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E.O. 12958: DECL: 06/27/2017
TAGS: [PREL](#) [PHUM](#) [MARR](#) [ASEC](#) [CASC](#) [KJUS](#) [FJ](#)
SUBJECT: FIJI UPDATE: TROUBLE WITH THE LEGAL SYSTEM

REF: SUVA 325 AND PREVIOUS

Classified By: Amb. Dinger. Sec. 1.4 (B,D).

Summary

1. (C) It appears that Fiji's interim President, Commodore Bainimarama, Justices Gates and Shameem, and others are making moves to reconstitute the Fiji judiciary. The suspension of Chief Justice Fatiaki in early January, the end of some expat Appeals Court Justices' terms, and several suspicious recent judicial appointments may affect eventual judgments in a stream of cases now entering the courts to challenge last December's coup. This month, prior to leaving the bench, President of the Appeals Court Gordon Ward and colleagues are deciding a number of interesting cases. Justice Gates' 2004 conviction of a high chief related to the army mutiny in 2000 was overturned and a retrial ordered. The acquittal of former PM Rabuka on charges also related to that mutiny was affirmed. On the other hand, a case by a human-rights activist seeking to bar military intimidation may be giving a sense of the capacity of the interim government and interim judiciary to influence court proceedings. End summary.

A vacuum forming in Court of Appeals

2. (C) The Fiji Court of Appeals has been sitting in June, attempting to resolve a series of pending criminal cases before the terms of a number of the justices expire in July. The Court of Appeals only sits twice a year for a month or so. Nearly all Court of Appeals justices in recent years have been expats, most from Australia and New Zealand. The current President of the Court of Appeals, Gordon Ward, is a Brit, though with long island connections. Historically, Fiji has reappointed many Court of Appeals judges for multiple terms. After the December coup, Ward and most of his colleagues decided they would stay in place to attempt to provide a stable judicial climate, but they could not in good conscience accept reappointment from an "illegitimate regime." When they retire next month, there will be a severe shortage at the appellate level. A rumor is spreading that Justice Nazhat Shameem, who reportedly encouraged coup plotters, may be named Ward's replacement.

More problems: the CJ and the JSC

3. (C) The military suspension of Chief Justice Daniel Fatiaki in early January adds to the problem. Aside from serving as a trial judge, the CJ heads the Supreme Court, the ultimate arbiter of justice above the Court of Appeals. The interim government has yet to name the promised independent tribunal to look into allegations of malfeasance against

Fatiaki. In the meantime, military-designated Acting Chief Justice Tony Gates and the military-appointed interim Chairman of the Public Service Commission (PSC), Rishi Ram, have pushed several judicial appointments through the supposedly-independent Judicial Services Commission (JSC). A former military lawyer has become a magistrate, and the former CEO of Foreign Affairs, Isikele Mataitoga, who is believed to have colluded with the coup plotters, has become a high-court judge. Retired Justice John Byrne, a friend of Gates, has been brought back on active duty. Not surprisingly, a case has begun in the courts challenging the legality of the interim-JSC process.

Interesting judgments upset Gates and Bainimarama

14. (C) Judgments from the Court of Appeals' June sitting are starting to appear. A three-judge panel ordered a retrial for a high Fijian chief who was given a life sentence by Justice Gates in 2004 for assisting a mutiny against the military in November 2000. That mutiny narrowly missed killing Bainimarama. The appeals panel heard evidence that Gates told people at a cocktail party prior to the trial that he would "put away" the chief. Accepting the evidence that Gates had pre-judged, the panel released the chief, pending retrial. Interim PM Bainimarama reportedly blames Ward for freeing the chief, one of Bainimarama's bitterest opponents. Another appeals panel confirmed the recent acquittal of former PM Rabuka on 2000-mutiny-related charges. Interim AG Sayed-Khaiyum suggested the appeals judgments rebut allegations that the judiciary has become politicized. Only last week, though, Sayed-Khaiyum was calling for Justice Ward to resign instantly for having urged Mah Weng Kwai from the LawAsia society not to accept the chairmanship of the interim

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government's commission against corruption.

Interfering in human-rights case?

15. (C) Another court case is also causing a stir. Human-rights activist Angie Heffernan sought a permanent injunction to forbid the military from hassling her. A trial judge granted a temporary injunction. Justice Byrne, assigned to court-of-appeal duties by Gates while Ward was out of town, heard an "emergency" appeal from the State without Heffernan's counsel present and stayed proceedings concerning the permanent injunction. This week Heffernan's counsel, John Cameron, a Kiwi/Aussie, was barred by Fiji Immigration from entering the country to continue the case. He intended to appeal to Justice Ward, in his last days on the job, to overturn the Byrne stay. Immigration cited lack of a work permit. Cameron noted the timing, recalled how he has been practicing on occasion in Fiji for 20 years using temporary, 14-day work visas, and alleged interference with the judicial process. The Australian Government has expressed concern.

Comment

16. (C) In the past, the Fiji judiciary has been seen as the institution that can bring the nation back on a stable course after a coup. That happened after 2000, in part through a ruling by Justice Gates denying that coup's legitimacy and affirming the Constitution. In the past, it did not appear that coup makers attempted to remove judges or influence judicial outcomes, though Justices Gates, Shameem, and Byrne took great offense in 2000 when then-President Ratu Mara sought and received advice from then-CJ Tuivaga and Justice Fatiaki about legal options for resolving that coup mess. Since December 2006, there appears to be a direct attempt by Bainimarama, interim AG Sayed-Khaiyum, and Justices Gates and Shameem to reconstitute the judiciary. With challenges to the coup now beginning to percolate up through the courts, it is not at all clear that the Fiji judiciary will be as staunch in defending constitutional anti-coup principles this time as it was in the past.

